

ALLAN D. HODGE

IBLA 75-407

Decided September 30, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, holding notice of location for trade and manufacturing site AA-8291 unacceptable for recordation.

Affirmed as modified.

1. Alaska: Trade and Manufacturing Sites -- Withdrawals and Reservations: Effect of

Where land within a trade and manufacturing site is withdrawn from appropriation prior to its occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, the invalid claim cannot be perfected.

APPEARANCES: Allan D. Hodge, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Allan D. Hodge appeals from the March 1, 1975, decision of the Alaska State Office, Bureau of Land Management, holding his notice of location of trade and manufacturing site AA-8291 unacceptable for recordation because he had not used and occupied the land prior to its withdrawal.

Appellant filed his notice of location on January 2, 1973. He stated that he made settlement on November 1, 1972. As improvements he listed "Marked bound[a]ries." Appellant claimed the site for "Cabin Rentals Recreation."

Subject to valid existing rights, the land described in the notice was withdrawn by Public Land Order 5418, 39 F.R. 11547 (1974), effective March 28, 1974.

The Alaska State Office found appellant had acquired no rights to the land by a mere filing of notice of location without actual possession and occupancy thereof. The State Office held that since

the land is now segregated from such appropriation by Public Land Order 5418, the notice of location is unacceptable for recordation.

In his appeal, Hodge states as follows:

The information that I received both written and verbal at the B.L.M. office on said AA-8291 Trade and Manufacturing Site on Jan. 2, 1973, specifically stated that I had five years to take up occupancy.

I made arrangements in July 1973, for the use of a D-8 cat, to start improvements on this site for the summer of 1975.

My wife (Norma J.) and I spent a considerable amount of money and time in June and July of 1973 getting a road through her T & M Site, which is at a nearby location.

Our plans had not been changed until receipt of your certified letter March 7, 1975, of Notice of Location Unaccepted for Recordation.

A field examination was conducted on September 14 and 19, 1974, and the Land Law Examiner concluded as a result of this examination that there was nothing on the site to indicate that the appellant had improved the land, except the possibility of the "boundary markings." The field examination revealed no improvements or other signs of use attributable to appellant.

[1] Under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, patent may be obtained for a trade or manufacturing site only when the land is used and occupied for the purpose of trade, manufacture, or other productive industry. Appellant has not submitted any evidence of such use and occupancy, the marking of boundaries and construction of an off-site road being insufficient. Donald Richard Glittenberg, 15 IBLA 165 (1974). Where land within a trade and manufacturing site is withdrawn for appropriation prior to its occupancy and possession for purposes of trade and manufacture, the invalid claim cannot be perfected. Glittenberg, supra.

As to whether it was proper for the State Office to hold the notice of location unacceptable for recordation, in Elden L. Reese, 21 IBLA 251 (1975), the Board pointed out that a notice of location regular on its face, for land open to location, is to be accepted and recorded, and not held in abeyance pending a field examination. We note in the case before us that a status plat prepared as of January 23, 1973, shortly after Hodge's notice was filed, depicts his T and M site by number and location. Thus, the

fact that Hodge's notice was on file was available to all who wanted to check on the status of the land. It also established that Hodge filed the notice required by the Act of April 29, 1950, in order to get credit for occupancy as of the date of filing or earlier. 43 CFR 2562.1. The procedure actually followed by the State Office therefore served the purpose of a recordation. It protected the interests of the United States, Hodge and the public, whether or not it amounts to a complete recording of the claim. In the circumstances, we deem it appropriate to hold the claim to be invalid for the reasons above given, rather than sanctioning any refusal to accept the notice of location for recording.

Regarding appellant's claim of reliance, there is nothing in the case file to indicate that appellant may have been misled by the Bureau as to the occupancy requirement. Information given in 1973, as to availability of the land for occupancy would have been superseded by the 1974 withdrawal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified.

Joseph W. Goss  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Martin Ritvo  
Administrative Judge

